

CHULMLEIGH ACADEMY TRUST

CONDUCT POLICY

This policy was adopted by the Board of Directions on: 16.1.19

CONDUCT POLICY FOR CHULMLEIGH ACADEMY TRUST

The policy to manage employee conduct including dealing with allegations against staff of abuse (in line with the Department for Education non-statutory guidance)

Delegated responsibilities

In line with School Staffing (England) Regulations 2009 (as amended), the Board of Directors has agreed to delegate the responsibility as follows:

Responsibility for Formal Conduct Hearings which may lead to dismissal:

To the Executive Headteacher

To the First Committee of Directors

Responsibility for suspension of employees as follows:

To the Executive Headteacher

To the Chair of Directors

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1 INTRODUCTION AND PURPOSE

1.1 Responsibility for Dealing with Staff Conduct

1.1.1 It is the responsibility of the Board of Directors and Executive Headteacher to ensure that the conduct of employees is appropriate and demonstrates consistently high standards of personal and professional conduct. All employees and everyone who works with Chulmleigh Academy Trust ('the Trust') should uphold public trust in staff working with children and should maintain high standards of ethics and behaviour, within and outside the Trust. The Board of Directors and Executive Headteacher should monitor and manage conduct effectively to meet expectations.

1.1.2 The Board of Directors and Executive Headteacher are responsible for ensuring that all employees are aware of this Policy and of any concerns regarding their conduct. The Board of Directors of the Trust, with the Executive Headteacher, is legally required to establish disciplinary procedures and is required to take appropriate steps to deal with employees whose conduct is unacceptable.

1.2 Aim of this Policy

1.2.1 This Policy sets out the expectations that the Trust has for staff and provides a framework of the process that will be followed if the conduct of staff falls below the standards required. The aim of this Policy is to ensure that all conduct issues are dealt with in a fair, effective and consistent manner.

1.3 Timings

1.3.1 The time limits included in this Policy may be varied by mutual agreement or where necessary. If it is necessary then reasons will be given for any change.

1.4 Release of Information from the Investigation

1.4.1 If requested, copies of confidential documents may be disclosed under Data Protection or Freedom of Information Act procedures. In all such instances, the issue of the individual's safety will be paramount.

2 POLICY

2.1 Application of the Policy

2.1.1 This Policy will be:

2.1.2 applied in accordance with the Equality Act 2010 and with the Trust's

2.1.3 Equality Policy;

2.1.4 consistently and fairly applied to employees across the Trust;

2.1.5 conducted with respect for the confidentiality of employees and in

2.1.6 accordance with Data Protection legislation; and

based on open communication between employees and their managers.

This Policy applies to all employees at the Trust, including the Executive Headteacher, and will be made available to every employee through the Trust's internal communication systems.

All employees working with children and vulnerable adults must understand that the nature of their work and the responsibilities related to it, place them in a position of trust. Any abuse of this trust will be managed under this Policy.

When making any decisions under this policy senior leaders must be aware of the particular needs and circumstances of each employee and must actively consider the duty not to discriminate on the basis of a protected characteristic. If there are any concerns about discrimination (or any other issues under the Equality Act 2010) (or if any issues are raised by an employee) then advice should be taken from the Executive Headteacher.

2.1.7 When making decisions under this policy senior leaders must always act in a way that treats an employee (or anyone else involved in the process) fairly.

This policy does not form part of terms and conditions and may be amended as appropriate.

2.1.8 While this policy should be followed, it may be varied to meet the needs of the particular situation. For example, while timescales should be followed, if they cannot be met then reasons will be given why. If any other variation of the policy is necessary then reasons will be given for any change. However, advice should be taken from the Executive Headteacher before any such variations are made.

2.1.9

2.1.10

For ease of reference, if '(Chair of Directors)' is following the words 'Executive Headteacher', the Chair of Directors or nominated representative will manage this Policy in relation to issues concerning the Executive Headteacher.

2.1.11

2.2 Duty to Act

2.2.1 The Board of Directors values the contribution of all its employees in the provision of education for pupils at the Trust. The Board of Directors has a duty to provide an effective education to the pupils and to minimise disruption to effective learning. The Board of Directors is therefore committed to ensuring that employee conduct is managed effectively and professionally in line with his/her contract. This will be achieved through:

2.2.1.1 clarity of conduct standards required;

2.2.1.2

2.2.1.3 monitoring of employees' conduct; and

supporting and managing employees at work to address concerns.

2.3^{2.3.1} Authority to Take Action

2.3.1.1

Designated Investigator

2.3.1.2 Where there are concerns about an employee's conduct and action is to be taken in accordance with this Policy, an appropriate person should be appointed as a Designated Investigator by the Executive Headteacher (Chair of Directors) to investigate. The Designated Investigator may be the Executive Headteacher (Chair of Directors).

2.3.2

2.3.2.1 The Designated Investigator should have had no previous involvement in the complaint, no close relationship with any involved party nor a vested interest.

Formal Conduct Hearings

Formal Conduct Hearings may be conducted by the Executive Headteacher in accordance with his/her delegated responsibilities except where s/he has had significant previous involvement in the matters being considered and/or is the Designated Investigator, in which case the First Committee of Directors will conduct the Formal

Conduct Hearing.

Appeal Hearings

Appeal Hearings will be conducted by the Second Committee of Directors, comprising directors who have had no previous involvement in the matters being considered.

3 CONFIDENTIALITY

3.1^{2.3.3} Need for Confidentiality

2.3.3.1

Any parties affected by or involved in the application of this policy will be expected to maintain an appropriate level of confidentiality.

3.2 Employees Involved in the Application of this Policy

3.1.1 Breaches of confidentiality will be taken seriously, especially if they hinder the application of the Policy. Failure to maintain confidentiality may result in action being taken under this Policy.

3.2.1 Disclosure of information may also be a breach under Data Protection legislation and may lead to action being taken under the provisions of the relevant legislation, in addition to action being taken under this Policy.

3.2.2

3.2.3 If any member of staff is uncertain who they can talk to about the case, they should seek advice from their line manager (if appropriate), the Designated Investigator, an HR professional or their trade union.

4 RECORD KEEPING STANDARDS

4.1 A written record must be made of all interviews and meetings held during the application of this Policy. Those involved in each meeting will be provided with a copy of any records made.

4.2 In exceptional circumstances and only with the prior consent of all members of the meeting, it may be appropriate to tape record meetings instead of taking hand written or typed notes. The tapes will be transcribed and sent to either the Designated Investigator (if the tape is of an investigation meeting) or the appropriate Chair of Committee (if the tape is of a Formal Conduct Hearing or Appeal) to check for accuracy.

4.3 The Designated Investigator will ensure there is a full, comprehensive case file of the process which should include all statements, records and evidence. The Designated Investigator will be responsible for collating and storing all papers confidentially.

4.4 All records will be retained confidentially, securely and in accordance with Data Protection legislation.

5.1.1

5 GENERAL PRINCIPLES

5.1 Being Accompanied at Formal Conduct Hearings

An employee has a statutory right to be accompanied at any Formal Conduct Hearing. To invoke that right an employee must make a reasonable request to be accompanied by either a representative from a recognised trade union or an appropriate work colleague. It would not normally be reasonable for an employee to be accompanied by a work colleague or trade union representative whose presence would prejudice the Formal Conduct Hearing and/or to be accompanied by a work colleague or trade union representative from a remote geographical

location if someone suitable and willing was available on site.

5.2 Being Accompanied at Meetings

Although no statutory requirement exists, an employee who is the subject of an investigation under this Policy will be permitted to be accompanied to investigatory meetings by either a representative from a recognised trade union or an appropriate work colleague. The work colleague or trade union representative must have no involvement in the circumstances and must make themselves available appropriately as to cause no unreasonable delay to the investigation.

5.2.1

Teachers can also seek information and support from the Teacher Support Network at: <http://www.teachersupport.info/>

5.3 Fair and Reasonable Application of this Policy

5.3.2 Essential to the fair and reasonable application of this Policy are the legal requirements that:

5.3.1 the employee must know the allegations made against him/her at the earliest opportunity, subject to any restrictions as a result of a legal / statutory process;

5.3.1.1

the employee must have an opportunity to state his/her case before any decision is made affecting the contract of employment;

5.3.1.2

the investigation must take place as quickly as possible;

5.3.1.3

5.3.1.4

any determinations must be unbiased, fair, reasonable and made in good faith; and

5.3.1.5

any sanction should be proportionate to the level of misconduct.

5.4 Standard of Proof

5.4.1

Within this Policy the 'balance of probability' test should be applied, this means that the employer must establish that it is more likely than not that the employee committed the act in question.

5.5.1

5.5 Conduct Action against a Trade Union Representative

The usual standards of conduct apply to trade union representatives. No action will be taken within this Policy against an employee who is an accredited trade union representative, nor will suspension normally be applied, until the circumstances of the case have been discussed with a paid official nominated for such purposes of the trade union concerned.

6.1.1

6 EMPLOYEE RESPONSIBILITIES

6.1 Conduct Standards Expected from Employees

6.1.1.1

The public is entitled to demand conduct of the highest standard from employees working in educational settings. The expectations of employees include but are not limited to:

maintaining standards of conduct in keeping with the interests and standing of the Trust. This includes behaviour outside of working hours and in any form that is visible to the public, including social networking or any electronic form;

devoting full attention while at work to the duties of his/her position and in doing so acting with responsibility, good judgement and in good faith;

carrying out any reasonable lawful instructions given by those with responsibility to do so;

6.1.1.2 never, under any circumstances, divulging to any unauthorised person, or making personal use of confidential information connected with the Trust either intentionally or through negligent behaviour;

6.1.1.3 observing the rules, regulations and instructions adopted by the Trust;

6.1.1.4 following appropriate safeguarding procedures;

6.1.1.5 participating fully in any investigation into alleged incidents and/or allegations including attending meetings as directed;

6.1.1.6 using electronic communications appropriately;

6.1.1.7

6.1.1.8 recognising that the instigation of this Policy is being undertaken in the interests of the Trust and ensuring that all information brought to light as a result of any investigation is treated with discretion;

6.1.1.9

6.1.1.10 carrying out his/her role consistently with any standards set by his/her appropriate professional body;

6.1.1.11 taking steps to address any unacceptable conduct; and

6.1.1.12

6.1.1.12 treating colleagues and third parties with dignity and respect.

6.1.2 Employees have a responsibility, where necessary, to take any steps required to address their behaviour.

7 MANAGEMENT RESPONSIBILITIES

7.1.1.1 The Role of Senior Managers and the Board of Directors

7.1.1.1 The expectations of the Executive Headteacher and those employed in management roles, in addition to the above, are to:

7.1.1.2 ensure the conduct standards expected from employees are role-modelled, monitored and managed effectively;

7.1.1.3

7.1.2 effectively manage all statutory and non-statutory obligations within the Trust; and

appropriately manage all alleged incidents and/or allegations.

The Board of Directors and senior managers are required to ensure that each employee is aware of this Policy and understands both the professional conduct that is required of them and the consequences of not meeting the required standards of behaviour. Action should be taken consistently to identify concerns and reinforce standards of behaviour before it becomes necessary to take formal action. The Board of Directors and senior managers are required to manage the process effectively, fairly and reasonably if it is necessary to use this Policy.

8 DEFINING INAPPROPRIATE CONDUCT

8.1 Distinguishing between Capability and Conduct

Conduct is about an employee's behaviour and not about their ability to perform their job. Misconduct is where the employee's behaviour is inappropriate and inconsistent with the standards of conduct expected by the Trust.

8.2 Misconduct Behaviour

8.1.1 The following list provides examples of what might constitute misconduct. This list is not exhaustive but gives examples of behaviour that may be dealt with under this Policy. However, it should be noted that depending on the seriousness of the circumstances, any of these actions may be treated as gross misconduct:

- 8.2.1 Refusal to comply with reasonable and lawful instructions;
- 8.2.1 Timekeeping, including failure to remain at work during contracted hours and being absent without permission;
- 8.2.1.1 Negligent actions or behaviour;
- 8.2.1.2 Failure to disclose relationships which may compromise the integrity of the Trust or any work practices;
- 8.2.1.3
- 8.2.1.4 Failure to disclose a personal relationship with a colleague/service user which impacts on professional duties;
- 8.2.1.5 Inappropriate use of the Trust's equipment/property;
- 8.2.1.6 Breach of confidentiality;
- 8.2.1.7
- 8.2.1.8 Failure to comply with Health and Safety requirements;
- 8.2.1.9 Actions that may bring the Trust into disrepute;
- 8.2.1.10 Discrimination and/or harassment
- 8.2.1.11
- 8.2.1.12 Undertaking unnecessary personal activities during working hours;
- 8.2.1.13 Failure to report any concerns regarding the health, safety and welfare of children / pupil(s) / vulnerable adults; and
- 8.3.1 Misuse of social media.

8.3 Gross Misconduct Behaviour

- 8.3.1.1 The following list is not exhaustive but gives examples of behaviour that could be regarded as gross misconduct:
- 8.3.1.2
- 8.3.1.3 Physical, sexual, emotional or verbal abuse of children, vulnerable adults, colleagues, parents customers or volunteers;
- 8.3.1.4
- 8.3.1.5 A criminal offence applicable to the work performed;
- inappropriate conduct and/or contact with a child and/or pupil aged 17 years or under
- Inappropriate contact with a child/vulnerable adult either physical or non physical e.g. via a social network;
- Grooming - actions deliberately undertaken with the aim of befriending and establishing an emotional connection with a child, in order to lower the child's inhibitions in preparation for abuse or

exploitation, by a person who is in a position of trust in relation to a person under 18 who is receiving education in an education institution. Grooming is illegal.

Abuse of a position of trust;

Possession of, taking or distributing indecent photographs or publications, possession of such documents where children/vulnerable adults present;

8.3.1.6 Breach of security, financial procedures or confidentiality;

8.3.1.7 Inappropriate use of computer, laptop and/or communications systems, including but not limited to inappropriate communications using technology i.e. texts, social networking websites;

8.3.1.8 Making of vexatious and/or malicious allegations;

8.3.1.9 Discrimination, including harassment and victimisation on the grounds of race, colour, ethnic or national origin, nationality, gender, sex, sexual orientation, disability, marital or civil partnership status, pregnancy or maternity status, age, religion or belief;

8.3.1.10 Being an active member or an associate of any group that does not uphold the ethos of equality for all;

8.3.1.11 Dishonesty, theft, bribery, fraud (including corruption), misuse of the Trust property or resources, or deliberate falsification of records;

8.3.1.12 Bullying and/or Harassment, including cyber bullying;

8.3.1.13 Providing false information in relation to an application for employment, qualifications, etc;

8.3.1.14 Fighting, assault or any violent behaviour to children, vulnerable adults, colleagues, parents, customers, volunteers, contractors or members of the public;

8.3.1.15 Deliberate damage to property or equipment;

8.3.1.16 Sleeping or carrying out inappropriate activities e.g. using Facebook, during working hours;

8.3.1.17 A criminal conviction inconsistent with the standards expected for the role;

8.3.1.18 Failure to disclose any pending criminal proceedings for which an arrest or a formal charge is made, any conviction, caution, reprimand, bind over or final warning received;

8.3.1.19 Being under the influence of alcohol, illegal substances or drugs at work;

Being in possession of illegal substances or drugs;

Serious negligence which causes unacceptable loss, damage or injury;

Refusal to follow a reasonable formal management instruction;

Engaging in unauthorised employment during hours contracted to work for the Trust or during periods of specially designated leave e.g. sick leave, special leave etc.;

Abuse of the sick pay scheme;

Behaviour that leads to a breakdown in working relationships;

8.3.1.25 Failure to uphold the professional standards of the role the employee is employed to perform;

8.3.1.26 Misconduct and/or displays of lack of professionalism which leads to the employee deliberately absenting him/herself from work;

8.3.1.27

8.3.1.28 any of the listed items from the above 'misconduct' list;

8.3.1.29 perpetrator of domestic violence; and

8.3.1.30 breach of data protection legislation and/or the Trust's Data Protection Policy.

8.3.1.31

8.3.1.32 Additionally, in the case of the Executive Headteacher and Senior Managers:

8.3.2 Deliberate failure to meet reporting responsibilities to the Board of Directors;

8.3.2.1

Failure to uphold the professional standards expected;

8.3.2.2

8.3.2.3 Negligent conduct which leads to poor provision of education to children;

8.3.2.4

Undermining the Executive Headteacher/Board of Directors;

8.3.2.5

Failure to comply with Safeguarding of Children requirements; and

8.3.2.6

8.3.3 Failure to maintain appropriately checked records of employees e.g. DBS, Right to work in the UK etc.

8.3.4 Some examples of behaviour at work may also constitute a criminal matter, e.g. bribery may fall under the Bribery Act 2010.

The above lists are not exhaustive and there may be several other breaches of conduct that may be deemed to be misconduct or gross misconduct.

9 RELEVANT PROFESSIONAL BODY'S CODE OF CONDUCT

9.1 As well as those categories outlined above, staff are also required to adhere to the Code of Conduct applicable to their profession (e.g. the Teachers Standards 2012 are applicable to all teachers including the Headteacher). Failure to adhere to this professional code of conduct may also result in the Trust taking action under this Policy.

10.1.1

10 ALLEGATIONS OF A SAFEGUARDING/CHILD PROTECTION NATURE

10.1 Statutory Provisions

Children are protected from physical, sexual, verbal and emotional abuse under legislation including The Children Act 2004, which places a duty on schools/services to safeguard and promote the wellbeing of children in their care. This includes the need to ensure that all adults who work with or on behalf of children are competent, confident and safe to do so.

Similar safeguards apply to adults working with vulnerable adults, that is 'a person aged 18 years or over who is, or may be in need of community care services by reason of mental or other disability, age or illness; AND who is, or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation' (Dept. of Health 2000).

- 10.1.2 Additionally the Sexual Offences Act 2003 covers child sex offences and has specific provisions relating to care workers for persons with a mental disorder and abuse of a position of trust.

10.2 Reporting Allegations

- 10.1.3 Any allegations involving safeguarding concerns, especially in relation to an alleged abuse of trust, must be reported to the Executive Headteacher (Chair of Directors) or the Designated Child Protection Teacher as long as the allegations do not relate to him/her.

- 10.2.1 The Executive Headteacher (Chair of Directors) must follow the “Responsibilities of the Senior Designated Officer (SDO) for Child Protection/Safeguarding” as outlined in “A Handbook for Senior Designated Officers Safeguarding/Child Protection in Education Settings”.

10.2.2

10.3 Access to Computers

- 10.3.1 Following any allegation of a child protection nature where there is reason to believe that evidence may be found on the employee’s work computer, the computer should be removed from the employee’s possession and audited at the earliest opportunity.

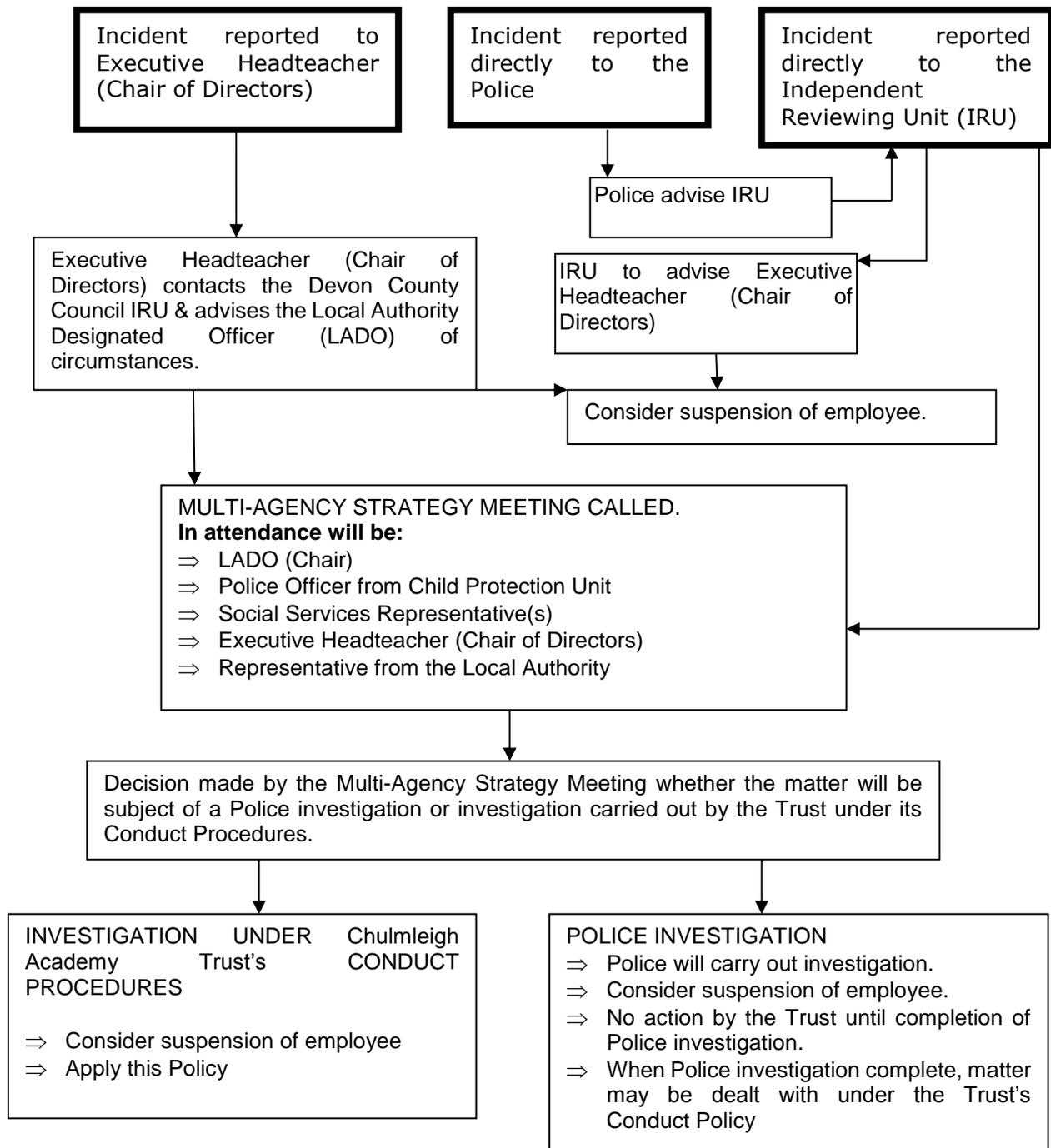
- 10.3.2 It is particularly important not to access the employee’s computer until this has happened.

- 10.3.3 The Executive Headteacher (Chair of Directors) and senior managers should be aware that a criminal act may have been committed, e.g. inappropriate communication with a pupil(s) or vulnerable adult and therefore the evidence must be preserved.

10.3.4

Consideration should be given to restricting the employee's access to ICT accounts, e.g. webmail, and/or it may be appropriate for access to be blocked until appropriate action has been taken to secure data.

11 **ALLEGATIONS/INCIDENTS CONCERNING THE ABUSE OF A CHILD BY A MEMBER OF STAFF**



12.2.1.1 **ALLEGATIONS IN THE PUBLIC INTEREST (WHISTLEBLOWING)**

12.1^{1.2} There may be occasions when the allegations are made by an employee about something that is in the public interest and could be constituted as a 'protected disclosure' under the

12.1.3 Whistleblowing Policy. Such allegations may include matters where there may have been:

an unlawful or a criminal offence;

a breach of a legal obligation (but not a personal contractual breach unless such breach involves a matter of public interest);

a miscarriage of justice;

mistreatment or abuse of a client for whom the Trust has a responsibility;

in disregard of legislation governing health and safety at work;

seeking undue favour over a contractual matter or a job application; or against the Trust's Financial Regulations;

actions which amount to improper conduct or unauthorised use of public funds;

12.1.4

actions which have led to or could lead to damage to the environment; or

12.1.5

12.1.6 deliberately covers up information tending to show any of the above.

12.1.7 In these circumstances it may be appropriate to invoke the Trust's Whistleblowing Policy at the same time as the Disciplinary Policy. Where it appears that allegations may constitute

12.1.8 a protected disclosure, those allegations will be referred for consideration under the

12.1.9 Whistleblowing Policy.

13 CRIMINAL OFFENCES / POLICE INVOLVEMENT

13.1 A decision must be made whether to apply this Policy as a result of any charge or conviction resulting from a criminal offence. This includes police cautions and/or warnings. This may apply in circumstances where the alleged offence may have an effect on employment or where this could bring the Trust into disrepute.

13.2 In most cases, it is important that the internal investigation under this policy is not delayed. However, where the investigation may hamper a police investigation or has the potential to prejudice any future court proceedings, it is essential to liaise with the police to determine the most appropriate course of action.

14 CONDUCT OUTSIDE WORK

14.1 Unacceptable behaviour and/or criminal offences that have occurred outside of work may be dealt with under this Policy if the employee's behaviour or activities:

14.1.1

may make them unsuitable for the job they are employed to do (e.g. failure to protect their own children);

14.1.2

has the potential to cause damage to the reputation of the Trust. This includes written and verbal communications and covers all types of media including newspapers, internet, and social networking sites such as Facebook, Instagram, Bebo, Myspace and Twitter;

14.1.3

14.1.4

identifies them as a perpetrator of domestic violence;

14.1.5

identifies them as behaving in a way that leads to a breakdown in the working relationships;

14.1.6

is inconsistent with the professional standards of public behaviour expected of the role e.g. lewd behaviour, being intoxicated in public, association with illegal drugs; and/or

identifies them as having engaged in inappropriate contact with a child, pupil(s) or vulnerable adult.

14.2 The above list is not exhaustive. The Trust may view other behaviour as suitable for being considered under this Policy.

15 REPORTING OBLIGATIONS

15.1 Professional Bodies

15.1.1 Where there are cases which could potentially call into question an employee's professional registration, managers should ensure that they follow the appropriate procedure for reporting concerns to the relevant Registered Body. This will ensure that the body can investigate the individual's ability to carry out their professional duties or take other appropriate action in the circumstances. Further information on making a referral can generally be found on the professional body's website. Where a referral is necessary, this should be made at the end of the formal process.

Any cases of unacceptable professional conduct by a teacher should be reported to the DfE. 'Unacceptable professional conduct' is defined as 'conduct which falls short of the standard expected of a registered teacher... and is behaviour which involves a breach of the standards of propriety expected of the profession.'

15.2^{15.1.2} Disclosure and Barring Service (DBS) (Previously the ISA)

15.2.1 The primary role of the Disclosure and Barring Service (DBS) is to help employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including children.

15.2.2 The Safeguarding Vulnerable Groups Act (SVGA) 2006 places a duty on employers of people working with children or vulnerable adults to make a referral to the DBS where an employer has dismissed or removed a person from working with children or vulnerable adults (or would or may have if the person had not left or resigned etc.) because the person has:

15.2.2.1 been cautioned or convicted for a relevant offence; or

15.2.2.2 engaged in relevant conduct in relation to children and/or vulnerable adults, i.e. an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk of harm; or

15.2.2.3

15.2.3 satisfied the Harm Test in relation to children and/or vulnerable adults i.e. there has been no relevant conduct (i.e. no action or inaction) but a risk of harm to a child or vulnerable adult still exists.

15.2.4 The referral will enable the DBS to consider whether or not the individual should be barred from working with children and/or vulnerable adults and should be made as soon as possible after an employee has been dismissed or removed from working with children or vulnerable adults (or would have been if they had not resigned).

15.3.1 Further information about making a referral can be found at http://staff.devon.gov.uk/dbs_referral_process_and_guidance.doc.

15.3 HR advice

The Trust's HR Legal Advisor can provide advice and support to any manager or Directors involved in the application of this Policy at any stage. This includes attendance by an HR advisor at meetings/hearings where required. A representative of the Trusts legal team should be present to give advice at any hearing where dismissal may be considered.

16 **INFORMAL ACTION**

- 16.1 For minor breaches and incidents, for example occasional time keeping issues, consideration should always be given to using informal action such as professional guidance and/or additional training as this may be sufficient to address the concerns. Any such action should be confirmed in writing and monitored to ensure the required improvements are made and sustained. This does not form part of the formal disciplinary procedure.
- 16.2 Alternatively, although unlikely, it may be appropriate for the matter to be dealt with by mediation, depending on the nature of the matter. This involves the appointment of third-party mediators, who will facilitate discussion of the issues raised. Mediation will be used only where all parties involved agree to engage in the process and the Trust considers it to be beneficial in order to resolve the situation.

17 **CLARIFYING THE INCIDENT/ALLEGATIONS MADE**

- 17.1 In order to determine the most appropriate course of action the Executive Headteacher (Chair of Directors) or appropriate school manager should hold a management meeting to establish the fundamental circumstances of the incident/allegations made by speaking to those primarily involved in order to determine if an issue may have occurred which is capable of being dealt with under this Policy.
- 17.2 As long as the issue is not of a safeguarding nature which requires referral to an Independent Reviewing Unit (see L.4.), the Executive Headteacher (Chair of Directors) or appropriate school manager, should see the employee, in an appropriate location, at the first opportunity in order to:
- 17.2.1 bring to the employee's attention, the incident and/or allegation made against him/her; and advise him/her to contact his/her trade union representative if, following the employee's response, it becomes clear that the incident/allegation will require investigation;
 - 17.2.2 explain the process and advise who the Designated Investigator(s) will be; and
 - 17.2.3 advise him/her that the circumstances may be treated as misconduct or gross misconduct and give him/her a copy of this Policy.
- 17.3 If it is not possible to meet with the employee in person within a reasonable timeframe, the Executive Headteacher (Chair of Directors) may conduct this conversation over the telephone or write to the employee.
- 17.4 The Executive Headteacher (Chair of Directors) should consider whether it is appropriate for the employee to remain at work, be temporarily transferred to suitable alternative duties, asked to remain away from work or be suspended.

18.1.1 **TEMPORARY TRANSFER TO SUITABLE ALTERNATIVE DUTIES, INSTRUCTING TO REMAIN AWAY FROM WORK OR SUSPENSION FROM DUTY**

18.1 **Temporary Transfer to Suitable Alternative Duties**

An employee may be directed to temporarily transfer to alternative duties if it is not appropriate for the employee to remain in their current role during the course of the investigation. The employee is obliged to undertake such duties during the investigation process, unless s/he has legitimate reasons to believe them not to be a reasonable alternative.

18.2 **Instructing the Employee to Leave the Premises and Remain Away from Work Until Further Notice**

If the allegations determine that it is not appropriate for the employee to be at work, the Executive Headteacher (Chair of Directors) may in the short term ask the employee to remain away from work. This will only be done in circumstances when there appears to be an issue which may place the employee or others at risk or where there may be a detrimental impact if the employee remains in the workplace. Examples include, but are not limited to:

18.2.1 If the Executive Headteacher (Chair of Directors) is not available to make the decision on suspension.

In order to give time to make a determination with regards to whether suspension is appropriate.

18.2.1.1 The allegations needs to be investigated and it is not appropriate for the employee to be in school during the investigation.

18.2.1.2 The Executive Headteacher (Chair of Directors) will consider if it is necessary to ask for work equipment (keys, phones, premises access 'smartcards' etc.) to be returned or access to ICT systems etc. restricted. When sending home, care should be taken to ensure that the employee can get home safely.

18.2.2

While the employee is directed to remain at home an agreed senior member of staff, not involved in the investigation, should be nominated to remain in contact with the employee on work matters but must not discuss the allegations or investigation. Details of this contact will be agreed between the employee and the nominated contact officer.

18.2.3

The Trust may consider offering a counselling service if considered appropriate.

18.2.4

18.2.5

The Executive Headteacher (Chair of Directors) should decide, within a reasonable period, that the employee should return to work, be suspended, or be temporarily transferred to suitable alternative duties and confirm this in writing to the employee.

18.3 **Suspension from Duty**

18.3.1

Suspension is not a disciplinary penalty; it is a precautionary measure, pending further investigation and possible formal proceedings. It should be made clear that this is a wholly neutral act and does not in anyway influence any final decisions to be made and does not imply any wrong doing.

18.3.2

There should be no automatic suspension and a decision to suspend should only be made where there are reasonable grounds to do so, after giving full consideration to other options (which were determined not to be appropriate). It is important that any decision to suspend an employee can be justified and that evidence of considerations of alternatives to suspension, and why they were thought not appropriate, can all be demonstrated.

18.3.3

18.3.3.1

The appropriateness of suspension should be decided based on the seriousness of the allegations and whether one or more of the following circumstances exist:

18.3.3.2

If it is considered that the employee's continued presence in the Trust would have a seriously detrimental effect on the running of the Trust, or investigations into the allegations, or upon colleagues; and/or

When the alleged misconduct is sufficiently serious that the outcome may be dismissal; and/or

Where an employee is the subject of a police investigation and the

alleged offence is considered relevant to his/her duties; and/or

Where it is necessary to await the outcome of some other matter e.g. criminal charge; and/or

Where there are reasonable grounds to believe that it would seriously affect the interests of the Trust and/or the employee if s/he were to remain at work; and/or

18.3.3.4 Where there is a need to prevent access to any records or systems; and/or

18.3.3.5 There will be a media interest/publicity that may negatively affect the Trust/children.

18.3.3.6 Suspension will be on normal pay and could occur at any stage within the process of following this Policy.

18.3.3.7

18.3.4 The Executive Headteacher, if s/he is not the investigator, or Board of Directors (or the Chair of Directors if delegation has been agreed) may suspend a member of staff.

18.3.5

The employee should ideally be advised of any decision to suspend in person. The suspension must be confirmed in writing to the employee by the Executive Headteacher (Chair of Directors).

18.3.6

18.3.7 Consideration should be given regarding the employee returning any work equipment in their possession, access rights to work ICT systems and access onto the Trust site.

18.3.8

The Executive Headteacher (Chair of Directors) will consider if it is necessary to ask for work equipment (keys, phones, premises access 'smartcards' etc.) to be returned or access to ICT systems etc. restricted. When sending home, care should be taken to ensure that the employee can get home safely.

18.3.9

While the employee is suspended an agreed senior member of staff, not involved in the investigation, should be nominated to remain in contact with the employee on work matters but must not discuss the allegations or investigation. Details of this contact will be agreed between the employee and the nominated contact officer.

18.4.1

18.4 Reviewing and Lifting Suspension

18.4.2

In consultation with the Designated Investigator, the Executive Headteacher (Chair of Directors) should review the suspension regularly to determine whether it should continue or if the employee should be allowed to return to work.

18.4.3

A suspension can only be lifted at a meeting of the full Board of Directors. Therefore if it might be appropriate for the employee to be allowed back to work, the Executive Headteacher (Chair of Directors) should refer the matter to the Board of Directors with sufficient information to enable them to reach a decision but taking into consideration the need for confidentiality of the individual.

If the Board of Directors decides that the employee should be allowed back to work, the Executive Headteacher will contact the employee to discuss arrangements and should confirm the decision in writing.

19 THE INVESTIGATION

19.1 The Designated Investigator

The Executive Headteacher (Chair of Directors) will nominate an appropriate person who has had no previous involvement in the circumstances of the incident/allegation to carry out an investigation. This Designated Investigator should be either a school manager (including the Executive Headteacher) or a member of the Board of Directors or an independent person.

19.1.1 Any investigation carried out under this Policy will be thorough, unbiased and reasonable in the circumstances. Designated Investigators should be clear that their role is to investigate and not to express any views on whether or not disciplinary action should follow. It is for them to consider whether or not there is a case to answer.

19.1.2 The nature and extent of the investigation will depend on the seriousness of the matter and should be proportionate to the allegation that has been made.

19.2 Interviews

19.1.3 The employee against whom the allegation has been made should be interviewed as part of the investigation to allow him/her to respond to the allegations. In exceptional circumstances, if it is not possible to hold a face to face meeting, attempts should be made to conduct the interview over the telephone or the employee should be given the opportunity to submit a statement in writing. Interviews should follow a standard format and any interview or witness statement produced should be signed and agreed by the witness.

19.3 Witnesses

19.3.1 The Designated Investigator will determine who should be interviewed as possible witnesses. S/he will interview any witnesses nominated by the person against whom the allegations have been made, as long as their relevance is made clear and it is appropriate in the circumstances.

19.3.2 Employees are contractually required to provide factual information regarding any matter witnessed in connection with the circumstances of the incident/allegation to the Designated Investigator.

19.3.3 There is no statutory right for a witness to be accompanied by a work colleague or trade union representative.

19.4 Vulnerable Witnesses

19.4.1 If it is necessary to interview children formally as part of an investigation, their parents/carers should be advised and consent obtained in advance.

19.4.2 A suitable person may accompany a child during the interview, unless parental consent has been given to them being interviewed unaccompanied, but must not significantly contribute to the interview.

Vulnerable adults should be accompanied by a suitable person.

The employee's trade union representative or nominated work colleague may be present at any interview to avoid the necessity of interviewing the child/vulnerable adult more than once or requiring them to attend the Formal Conduct Hearing, as long as this is not prejudicial to the integrity of the investigation.

Before the meeting the trade union representative should provide the Designated Investigator with any questions they wish to be put to the child/vulnerable adult. If the trade union representative wishes to put further questions to them during the course of the interview they should request an adjournment to provide the Designated Investigator with the additional questions.

19.4.5 Consideration should be given as to who is an appropriate person to question children and vulnerable adults taking into account the age, gender and any particular needs of them.

19.4.6 If the Designated Investigator(s) consider(s) the presence of another adult may be intimidating or prejudicial to the investigation, the interview may be tape recorded.

19.4.7 If the case goes to a Formal Conduct Hearing, the employee will be provided with a transcript of the interview (if taped) or notes of the meeting.

19.5 Malicious Allegations

19.4.8 If it is found that a pupil(s) has made a malicious allegation(s), their actions are likely to have breached the Trust's Behaviour Policy. The Committee should refer the matter to the Executive Headteacher to consider whether to apply an appropriate sanction, which could include temporary or permanent exclusion as well as referral to the police (if there are grounds for believing a criminal offence may have been committed).

19.5.1

19.6 Malicious/Vexatious Allegations by Employees

19.6.1 Should the person(s) conducting the investigation/Formal Conduct Hearing find that malicious and/or vexatious allegations have been made by an employee, which have led to another employee being the subject of an investigation under this Policy, the person(s) conducting the investigation/Formal Conduct Hearing should refer the matter back to the Executive Headteacher for appropriate action to be taken under this Policy against the employee making the malicious/vexatious allegations.

19.7.1 Mitigating Circumstances

19.8.1 If, during the course of the Formal Conduct Hearing, the employee states that mitigating circumstances had a significant and negative impact upon their conduct, the Committee should seek to corroborate the information (e.g. if illness is the mitigating circumstance, the employee should produce a letter from his/her GP detailing the impact the illness has had on him/her) and take this into account when forming their recommendation.

19.8 Investigation Outcome

19.8.2 The Designated Investigator(s) will prepare a report for the Executive Headteacher (Chair of Directors) outlining the evidence gathered during the investigation, providing relevant documentation and recommending that either:

19.8.3

If referral to a Formal Conduct Hearing is not appropriate the Executive Headteacher (Chair of Directors) or Designated Investigator will write to the employee and advise accordingly.

If there is sufficient evidence to refer the matter to a Formal Conduct Hearing, the Executive Headteacher (Chair of Directors) will liaise with the Company Secretary to arrange for a Formal Conduct Hearing to be convened.

20 FORMAL CONDUCT HEARING

20.1 Formal Conduct Hearing Co-ordination and Notification

Following the notification to the Company Secretary that a Formal Conduct Hearing is to be convened, the Company Secretary will write to the employee requiring his/her attendance at a Formal Conduct Hearing. At least ten working days' notice of the Formal Conduct Hearing must be given. The letter should include:

- 20.1.1
 - the date, time, place of the Formal Conduct Hearing;
 - the names of the person(s) who will hear the case;
 - the precise allegations against the employee;
 - 20.1.1.1 the names and designation of any witnesses to be called;
 - 20.1.1.2
 - 20.1.1.3 the Designated Investigator's report including appendices and notification of who will present the management case;
 - 20.1.1.4
 - 20.1.1.5 the fact that if the allegation(s) is found to amount to gross misconduct, a sanction up to and including summary dismissal will be the outcome;
 - 20.1.1.6
 - 20.1.1.7 if the possible outcome is dismissal, that reporting obligations will be adhered to, as outlined within the Reporting Obligations Section of this Policy;
 - 20.1.1.8 the employee's right to request to be accompanied by a recognised trade union representative or appropriate work colleague, and to call witnesses;
 - 20.1.1.9
 - 20.1.1.10 that any documentation the employee wishes to submit should be provided to the Company Secretary at least four working days before the Formal Conduct Hearing date;
 - 20.1.1.11 a copy of this Policy;
 - 20.1.1.12 the fact that the Hearing may take place in the employee's absence if s/he is unable to attend without a satisfactory explanation. If s/he is unable to attend through illness, s/he can arrange representation at the Hearing and provide written submissions to the Formal Conduct Hearing;
- 20.2.1
 - that the employee should confirm to the Company Secretary that s/he will be attending and who his/her representative will be and the names of any witnesses s/he will be calling at least four working days before the Formal Conduct Hearing date.

20.2.2 Conducting the Formal Conduct Hearing

The employee should attend the Formal Conduct Hearing. If the employee is not able to attend due to ill health, s/he can arrange representation at the Formal Conduct Hearing and/or provide a written submission. In these circumstances s/he must provide a doctor's medical certificate.

The management case will be presented by the Executive Headteacher (Chair of Directors) or Designated Investigator. If the Executive Headteacher (Chair of

Directors) presents the management case, the Designated Investigator will attend the Formal Conduct Hearing to present his/her report to the person(s) conducting the Formal Conduct Hearing and answer any questions from the person(s) conducting the Formal Conduct Hearing and/or employee.

The employee or his/her representative can respond to the Designated Investigator's report, present the employee's case and the employee will answer any questions from the person(s) conducting the Formal Conduct Hearing and/or the Executive Headteacher (Chair of Directors) and/or the Designated Investigator.

20.2.3 The employee should present any mitigating circumstances at this stage.

20.2.4 Following presentation of all the evidence and when the person(s) conducting the Formal Conduct Hearing are satisfied that there is sufficient evidence to make a decision, the Formal Conduct Hearing will be adjourned. All parties, except the person(s) conducting the Formal Conduct Hearing and their HR Adviser, if in attendance, should leave the meeting room.

20.2.5

20.3 Decision making

The person(s) conducting the Formal Conduct Hearing will consider all the evidence presented.

20.3.1

The Committee, acting in good faith, will come to a view regarding the validity or otherwise of the allegation(s) and decide what action should be taken. In disciplinary cases the standard of proof required is the balance of probability, i.e. a judgment of whether it is more probable than not that misconduct (or gross misconduct) took place, or, that there is some other substantial reason that exists that justifies dismissal. The Committee should consider mitigating circumstances when making a decision on the outcome of the Formal Conduct Hearing.

20.3.2

20.4 Potential Outcomes

20.4.1

20.4.1.1 The person(s) conducting the Formal Conduct Hearing may decide, on the balance of probabilities, any of the following outcomes:-

20.4.1.2 **No formal action** – when the circumstances do not warrant a formal warning. In these instances professional guidance for the future may be provided or any other appropriate directions made to the employee.

20.4.1.3 **Verbal warning** - may be issued for minor breaches of conduct and will remain live on the employee's file for the period of time specified by the person(s) conducting the Formal Conduct Hearing and in line with the record keeping standards as detailed above. The employee should be advised that if a future Formal Conduct Hearing finds allegations of a similar nature proven and this is indicative of a pattern of behaviour, it may be taken into account.

Formal written warning - may be issued for breaches of conduct or repeated minor breaches of conduct and will remain live on the employee's file for the period of time specified by the person(s) conducting the Formal Conduct Hearing and in line with the record keeping standards as detailed above. The employee should be advised that if a future Formal Conduct Hearing finds allegations of a similar nature proven and this is indicative of a pattern of behaviour, it may be taken into account and dismissal may be an outcome.

Final written warning – may be issued for the first instance of a more serious breach of conduct or a repeated breach in conduct and will remain live on the employee’s file for the period of time specified by the person(s) conducting the Formal Conduct Hearing and in line with the record keeping standards as detailed above. The employee should be advised that if a future Formal Conduct Hearing finds allegations of a similar nature proven and it is indicative of a pattern of behaviour, it may be taken into account and dismissal may be an outcome.

20.4.1.4

Dismissal with notice – may be issued when:

20.4.1.5.1 the employee has, despite at least one previous formal warning, not improved his/her conduct but the misconduct does not amount to gross misconduct; or

20.4.1.5

20.4.1.5.2 where the conduct warrants dismissal but is not serious enough to warrant summary dismissal.

Summary dismissal – (Instant dismissal without notice). Summary dismissal is a reasonable response where an employee has committed an act of gross misconduct.

20.4.1.6

20.4.2 As outlined above, where action results in the issue of a warning of any type, there should normally be a specified period that the warning remains live for. If a warning relates to safeguarding children or vulnerable adults this sanction may be referred to in employment or other references that the Trust is required to provide - if the role involves responsibility or contact with children or vulnerable adults. This may be the case even where the warning is considered as spent, as Trust's safeguarding responsibilities would take precedence, although discretion will be applied to determine if this is appropriate.

20.5 Communicating the Decision

20.5.1

If possible, the decision should be confirmed verbally at the conclusion of the Formal Conduct Hearing, unless otherwise agreed.

20.5.2

20.5.3 The decision should be confirmed in writing by the person(s) conducting the Formal Conduct Hearing within five working days of the Formal Conduct Hearing. Where a warning/final written warning or dismissal is the outcome, the employee must be informed of their right of appeal and where to send the appeal.

20.5.3

20.6.1 If the outcome of the Hearing was to dismiss, the Chair of Directors will issue notice of dismissal. If the decision is to summarily dismiss the employee the letter must explain that this will be with immediate effect and there will not be a period of notice.

20.6.1

20.6 Advising Parents/Carers

21.1.1 Where the Formal Conduct Hearing has been convened to consider allegations of abuse by an employee against a pupil(s) at the Trust, the pupil(s)'s parents or carers should be advised of the outcome in confidence.

21.1.1

21 APPEAL

21.1 Making an Appeal

An employee has the right to appeal against the decision made at a Formal Conduct Hearing if that decision is to issue the employee with any sanction other

than a verbal warning.

If the employee wishes to appeal against the decision, they must do so in writing, specifying their grounds for the appeal, within five working days of receipt of the letter confirming the outcome of the Formal Conduct Hearing.

An employee may appeal on the following grounds:

- 21.1.2 the sanction given was too harsh given the circumstances;
- 21.1.3 the procedure was not fairly or correctly applied; or
- 21.1.3.1 new information has come to light that would directly affect the decision made at the Formal Conduct Hearing.

21.2 **Appeal Hearing Coordination and Notification**

- 21.1.3.2
- 21.1.3.3 The Appeal Committee consisting of the same number of Directors as at the Formal Conduct Hearing with no previous involvement in the circumstances of the incident/allegation should be convened at the earliest convenient date.

- 21.2.1 The employee should be given ten working days' notice of the date of the Appeal Hearing.

21.3 **Formal Conduct Hearing Preparation**

- 21.3.1 All information and documentation that is to be presented at the Appeal Hearing by either the employee or the Chair of the Formal Conduct Hearing must be exchanged at least four working days prior to the Appeal Hearing.
- 21.3.2 The Chair of the Appeal Committee will determine if the Designated Investigator should be called as a witness.

21.4 **Conducting Appeal Hearings**

- 21.4.1
- 21.4.2 The appeal may either be a review of the disciplinary sanction or a re-hearing, depending on the grounds of the appeal.

- 21.4.3 The employee will attend the Appeal Hearing to present his/her appeal to the Committee first and answer any questions from the Appeal Committee and the Chair of the Formal Conduct Hearing. The employee has the right to be accompanied to the Appeal Hearing by a recognised trade union representative or appropriate work colleague.

- 21.4.4
- 21.4.5 If the employee is unable to attend the Appeal Hearing without a good reason, the Committee will decide whether to proceed in his/her absence. The employee may send a representative on his/her behalf and/or provide a written statement.

- 21.5.1 The Chair of the Formal Conduct Hearing will attend the Appeal Hearing to respond to the employee's appeal and answer any questions from the Appeal Committee and the employee.

If the Designated Investigator is called as a witness, s/he will attend the Appeal Hearing to answer any questions from any of the parties. S/he can attend the whole meeting if all parties agree.

21.5 **Decision Making**

Once all the relevant issues have been thoroughly explored during the Appeal Hearing, the Appeal Committee will adjourn to consider its decision.

The Appeal Committee may make one of the following determinations:

Adjourn and refer the matter back to the Chair of the Formal Conduct Hearing if significant new evidence or information is provided, which was not available previously, and may change the original decision.

21.5.2 To conclude that a procedural irregularity occurred and determine whether this had an impact on the decision-making process and outcome. If so, determine an appropriate sanction and make a recommendation to rectify the situation.

21.5.2.1

21.5.2.2 To uphold the Appeal and determine an alternative sanction/appropriate course of action.

21.5.2.2

21.5.2.3 To reject the Appeal and uphold the previous decision of the Formal Conduct Hearing.

21.5.2.3

21.5.2.4 The Appeal Committee must decide if there are any reporting obligations which have not so far been followed.

21.5.2.4

21.6 Communicating the Decision

21.5.3

If possible, the Chair of the Appeal Committee should verbally communicate the Committee's decision at the conclusion of the Appeal, unless otherwise agreed.

21.6.1

21.6.2 The decision will be confirmed in writing to the employee within seven working days of the Appeal Hearing and informed that the decision is final.

21.6.2

21.6.3 Where there is a determination to uphold the appeal against dismissal, the Chair of Directors will retract the notice of dismissal issued to the employee and the employee will be reinstated.

21.6.3

END OF POLICY